

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Black Drum, Sheepshead, Flounder and Other Species Using Pompano Strike Nets (LAC 76:VII.349)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995. This emergency rule shall be effective on February 21, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule. This emergency rule supersedes the declaration of emergency published in the September 1995 *Louisiana Register*.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§349. Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a certified public accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant. Fishermen applying for fishing permits which require proof that 50 percent of his income was derived from the legal capture and sale of seafood species may also qualify using the following Alternative Method.

c. Alternative Method. Provided a fisherman meets all other qualifications for obtaining a commercial fishing permit except for having a tax return in one of the years 1994 or 1993, he will be allowed to provide proof that 50 percent of his income was derived from the legal capture and sale of seafood species for the current calendar year 1995 along with a 1040 and Schedule C from 1994 or 1993 which meets the qualifying standard. Said proof of the nature and amount of his 1995 income shall be as follows with no exceptions.

i. Applicant shall submit to the Department of Wildlife and Fisheries an affidavit signed by a certified public accountant (CPA) attesting to the audit of applicant's financial records and applicant's eligibility as defined by Act 1316.

ii. The Department of Wildlife and Fisheries shall make available the affidavit referred to in number 1 and number 6.

iii. CPA's engaged by applicants to prepare financial data shall adhere to generally accepted accounting principals as recognized by the American Institute of Certified Public Accountants (AICPA).

iv. The CPA shall require and accept documentation of applicant's financial transactions in the form normally acceptable to the I.R.S. The record keeping standards required by I.R.S. shall be adhered to in the evaluation of applicant's documentation.

v. The CPA shall prepare a financial statement depicting and listing separately applicant's total

earned income as well as his earned income derived solely from the capture and sale of seafood species. This financial statement shall represent the period beginning January 1, 1995 through September 30, 1995.

vi. The CPA shall provide an unqualified opinion attesting to the nature and amount of the applicant's earned income and whether said income complies with the requirement that more than 50 percent of the applicant's earned income was derived from the legal capture and sale of seafood species.

vii. The CPA shall provide copies to the Department of Wildlife and Fisheries (Licensing Section) of all financial documents relied upon in support of his unqualified opinion.

viii. The alternative method of fulfilling the earned income requirement shall become obsolete and discontinued on May 1, 1996. Applicants qualifying under the alternative method subsequent to December 31, 1995 shall be allowed to acquire a temporary permit which will be valid only through May 1, 1996. Those applicants receiving a temporary fishing permit valid from January 1, 1996 through May 1, 1996 may reapply for the usual permit at no additional cost, provided said applicant can provide proof of earned income as described in Act 1316 for two 12-month periods (calendar years) including the years 1993, 1994 and 1995 exclusively.

ix. Irrespective of the method used by applicant fishermen to qualify under the 50 percent earned income from the capture and sale of seafood species criteria, each applicant shall make available to the Department of Wildlife and Fisheries (Licensing Section) a certified copy of his Federal Income Tax return, including Schedule C of Federal Form 1040 prior to being issued any additional permits which require the 50 percent earned income test. Currently accepted 1040 and Schedule C Transcripts shall not be sufficient to qualify a permit applicant to renew or acquire a fishing permit beyond the period May 1, 1996. It is incumbent upon each permit applicant to obtain said 1040 and Schedule C information from the Internal Revenue Service.

d. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

e. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

B. Commercial Taking of Saltwater Finfish Using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday, October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday, October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this Paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of 1200 feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the 10th of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or 306.

AUTHORITY NOTE: Promulgated in accordance with 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990), amended LR 22:

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Glynn Carver
Chairman